IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONSOLIDATED RAIL CORP.	:	CIVIL ACTION
	:	
v.	:	
	:	
PORTLIGHT, INC.	:	NO. 98-2157

MEMORANDUM

Giles, J. October ___, 1998

Plaintiff brings this diversity action seeking rescission or reformation of a settlement agreement reached with the defendant. Now before the court is the defendant's Motion to Dismiss the Complaint for Failure to State a Claim, which the court will treat as a Motion for Judgment on the Pleadings, pursuant to Fed. R. Civ. P. 12(c).[1] For the reasons that follow, the motion is granted.

Factual Background

The underlying transaction in this case was a shipment of "JVC goods" from Japan to P.T. Imports ("P.T.") in Brooklyn, N.Y. via ocean liner to Los Angeles, CA, and via rail from Los Angeles to New York. (Complaint ¶¶ 5-6). American President Lines ("APL") managed the ocean transportation of the goods (Complaint ¶ 5) and the plaintiff handled a portion of the rail

[1] This court, by Order dated August 21, 1998, directed the defendant to file, and the parties to brief, a Motion to Dismiss for Failure to State a Claim. Because the defendant already had filed its answer and the pleadings were complete, the motion becomes one for Judgment on the Pleadings under Rule 12(c).

transportation from California to New York. The shipment arrived at P.T. allegedly missing 68 cartons of JVC goods, for which P.T. submitted a claim to its insurance carrier for $140,521. (Complaint ¶¶ 8-9). Upon receipt of payment, P.T. subrogated its rights and claims relating to the missing goods to the insurance carrier.

The insurance company then engaged defendant to pursue recovery of the subrogated claims. (Complaint ¶ 10). Defendant submitted the claim and documentation of the loss to the plaintiff; the parties negotiated a settlement in which the plaintiff paid $120,302.53 and the parties signed a release agreement. (Complaint ¶¶ 11-13). Subsequent to the settlement agreement, plaintiff learned that APL and Union Pacific Railroad Company ("Union Pacific") had negotiated a discounted rate to cover all rail transportation of the goods in exchange for limiting rail carrier liability to $500 per package. (Complaint ¶ 14). Under the terms of this arrangement, defendant's maximum recovery on its claim against the plaintiff would have been $33,500. (Complaint ¶ 15). Neither party was aware of this limitation of liability at the time they entered the settlement agreement. (Complaint ¶ 16). Plaintiff brings this action to rescind the settlement agreement or to reform the settlement to conform to the limits on liability.

DISCUSSION

A motion for judgment on the pleadings, pursuant to Fed. R. Civ. P. 12(c), is subject to the same standard as a Rule 12(b)(6) motion to dismiss. Constitution Bank v. DiMarco, 815 F. Supp. 154, 157 (E.D. Pa. 1993). The court must view all facts in the light most favorable to the non-moving party and accept all reasonable inferences from those facts. Corrigan v. Methodist Hosp., 158 F.R.D. 70, 71 (E.D. Pa. 1994). In order for the court to grant the motion, it must be clear that there are no issues of material fact and that only questions of law exist, id., or that the plaintiff can present no set of facts that would support his claim for relief. Constitution Bank, 815 F. Supp. at 157. This court thus must accept as true the allegations of the complaint that the Union Pacific-APL agreement contained a limitation-of-liability provision that would have applied to the defendant's claim had the parties not settled the matter and that both parties were unaware of this provision when they entered the agreement.

Plaintiff seeks rescission or reformation of the settlement agreement based on mutual mistake. A settlement agreement is a contract and is interpreted according to local law. Wilcher v. City of Wilmington, 139 F.3d 366, 372 (3d Cir. 1998). Mutual mistake provides a basis for reforming a contract where both parties to the contract are mistaken as to existing facts at the time of execution. Smith v. Thomas Jefferson Univ. Hosp., 621

A.2d 1030, 1032 (Pa. Super.), appeal denied, 631 A.2d 1009 (Pa. 1993); Restatement (Second) of Contracts, § 152. The plaintiff must show the existence of the mutual mistake by evidence that is clear, precise, and convincing. Smith, 621 A.2d at 1032.

However, "it is also established that underestimating damages or making a settlement before damages are accurately ascertained is not considered a mutual mistake of fact." Leyda v. Norelli, 564 A.2d 244, 245 (Pa. Super. 1989), appeal denied, 578 A.2d 414 (Pa. 1990). In the instant case, the plaintiff settled the claim with the defendant before either party learned of the existence of the APL-Union Pacific agreement and the limitations the agreement placed on the amount the defendant could have recovered in court and on the plaintiff's potential liability. In other words, the plaintiff made a settlement before the damages under defendant's claim had been accurately ascertained and before the plaintiff had accurately ascertained the scope of its potential liability for those damages. Under Pennsylvania law, this cannot be considered a mutual mistake of fact that will support a claim for rescission or reformation of the contract.

Further, even assuming that the lack of knowledge as to the limitations on liability constituted a mutual mistake, rescission cannot be had where the mistake is one for which the disadvantaged party bears the risk. Loyal Christian Benefit Assoc. v. Bender, 493 A.2d 760, 762 (Pa. Super. 1985), appeal

denied, (February 20, 1986). A party bears the risk of a mutual mistake, inter alia, when it is reasonable under the circumstances for the court to allocate the risk to that party. Restatement (Second) of Contracts, § 154(c); see Mistretta v. Liberty Mut. Ins. Co., No. 87-5779, 1988 WL 88085, *4 (E.D. Pa. 1988). Faced with a claim for damages, the plaintiff should have investigated the basis of that claim and its potential liability, including contacting APL and Union Pacific and obtaining complete information about the underlying contracts. On the other hand, the defendant was entitled to seek as much in satisfaction of its claim during settlement negotiations as it could, regardless of whether its recovery in court might be limited.[2] Under these circumstances, the risk of mistake as to the existence and terms of the limitation of liability is reasonably allocable to the plaintiff. See id. Thus, as a matter of law, that mistake cannot form the basis of a claim for rescission or reformation.

CONCLUSION

Because the mistake in question is not considered a mutual mistake under Pennsylvania law and because plaintiff bore the risk of the mistake, plaintiff has failed as a matter of law to

[2] This entitlement is somewhat limited. For example, the defendant could not fraudulently induce the plaintiff to enter the settlement agreement and it could not fraudulently conceal the existence of the limitation on liability. However, the plaintiff makes no allegations or suggestions of such fraud in the instant case.

state a claim. The defendant's motion for judgment on the pleadings is granted. Further, the plaintiff's Motion for Leave to File an Amended Complaint to Name an Additional Defendant is denied as moot.

An appropriate order follows.